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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN C. KUBOVCIK and
ROB P. LEWANDOWSKI

Appeal 2016-005209
Application 13/404,114
Technology Center 3600

Before JOSEPH L. DIXON, JUSTIN BUSCH, and JOHN D. HAMANN,
Administrative Patent Judges.

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–4, 6–8, 10, 12–19, 21, 22, and 24–27. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to a mobile reservation application. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A non-transitory computer-readable medium having stored thereon sequences of instructions which, when executed by at least one processor, cause the at least one processor to: receive, from a user, a first input associated with identifying a shower facility at a travel center or truck stop;

identify a direction in which the user is traveling;

generate, in response to the first input, a first communication requesting information identifying at least one shower facility;

forward the first communication to a network device associated with an entity operating a plurality of travel centers or truck stops, wherein the first communication includes:

a geographical location comprising global positioning system (GPS) coordinates obtained by a GPS unit associated with the user, and

information identifying the direction in which the user is traveling;

receive, from the network device, information identifying a plurality of shower facilities, wherein each shower facility is located at a different one of the plurality of travel centers or truck stops than other ones of the plurality of shower facilities, and each shower facility is located within a predetermined distance of the geographical location obtained by the GPS unit associated with the user in a forward direction with respect to the direction in which the user is traveling;

output, to a display, information identifying names of a plurality of travel centers or truck stops corresponding to the plurality of shower facilities;

receive, from the user, a second input selecting a first one of the plurality of shower facilities located at a first one of the plurality of travel centers or truck stops;

generate, in response to the second input, a second communication requesting that a shower at the first shower facility be reserved for the user; and

receive, from the network device, at least one of a confirmation code or an identification code associated with a reserved shower at the first shower facility.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Spitzer	US 2004/0225582 A1	Nov. 11, 2004
Betancourt et al. (hereinafter “Betancourt”)	US 2008/0208701 A1	Aug. 28, 2008
Yenni et al. (hereinafter “Yenni”)	US 2009/0119142 A1	May 7, 2009
Ferrara et al. (hereinafter “Ferrara”)	US 2009/0281817 A1	Nov. 12, 2009
Kaplan et al. (hereinafter “Kaplan”)	US 2010/0042318 A1	Feb. 18, 2010
Soroca et al. (hereinafter “Soroca”)	US 2010/0063877 A1	Mar. 11, 2010

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REJECTIONS

The Examiner made the following rejections:

Claims 1–4, 6–8, 10, 12–19, 21, 22, and 24–27 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1–3, 7, 8, 10, 12, 15, 16, 25, and 27 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Betancourt in view of Soroca.

Claim 4 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Betancourt in view of Soroca as applied to claim 1 above, further in view of Showers.

Claims 6, 17, and 24 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Betancourt in view of Soroca as applied to claim 1 above, further in view of Kaplan.

Claims 13 and 14 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Betancourt in view of Soroca as applied to claim 10 above, further in view of Yenni.

Claim 18 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Betancourt in view of Soroca as applied to claim 10 above, further in view of Spitzer.

Claims 19, 21, 22 and 26 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Betancourt in view of Yenni and Ferrara.

ANALYSIS

The Examiner makes a new ground of rejection in the Examiner's Answer, rejecting all claims as directed to non-statutory subject matter. Appellants respond to the rejection in the Reply Brief.

We have reviewed the Examiner's rejections (Final Act. 4–14; Ans. 3–4) in light of Appellants' contentions in the Appeal Brief (App. Br. 10–34) and the Reply Brief (Reply Br. 3–29) that the Examiner has erred, as well as the Examiner's response (Ans. 4–8) to Appellants' arguments in the Appeal Brief. We disagree with Appellants' conclusions.

We concur with the conclusions reached by the Examiner, and adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We highlight and amplify certain teachings and suggestions of the references, as well as certain ones of Appellants' arguments as follows.

35 U.S.C. § 101

Appellants argue claims 1–4, 6–8, 10, 12–19, 21, 22, and 24–27 as a group. *See* Reply Br. 3. We select claim 1 as the representative claim for this group, and the remaining claims 2–4, 6–8, 10, 12–19, 21, 22, and 24–27 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

For the reasons discussed in detail below, Appellants' arguments do not persuade us as to error in the rejection.

The Examiner analyzed the claims in accordance with the two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101 as articulated in *Alice Corp.*

Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014). (Ans. 2–3, 4–8).

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In accordance therewith, the Examiner found that (1) “[t]he claims are directed to the abstract idea of coordinating the reservation of shower facilities and other services at travel centers for people based on availability, estimated wait time, location, and other factors (as shown in the recited functions of claims 1-4, 6-8, 10, 12-19, 21, 22, and 24-27), which is a method of organizing human activities” (Ans. 3), and (2) the additional elements or combination of elements in the claims other than the abstract idea per se amount to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry. Viewed as a whole, these additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself. Therefore, the claims are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. (Ans. 3–4). From this, the Examiner determined that the claimed subject matter runs afoul of 35 U.S.C. § 101.

With respect to step 2A of the *Alice* analysis, Appellants contend:

Initially, the Appellants disagree with the characterization of claim 1 as directed to “coordinating the reservation of shower facilities and other services at travel centers for people based on availability, estimated wait time, location, and other factors” as

being an impermissibly reductive characterization of the specifically recited features of claim 1. That is, the Examiner has ignored significant features in the claims to come to a conclusion that the claims are abstract. Such a reductive characterization of claim 1 constitutes a reversible error.

The Examiner's Answer also states that the alleged abstract idea of claim 1 is similar to other abstract ideas held to be non-statutory by the courts and points to Dietgoal Innovations LLC v. Bravo Media, 599 Fed. Appx. 956 (Fed. Cir. 2015) and In re Maucorps, 609 F. 2d 481, 203 USPQ 812 (CCPA 1979). The Appellants disagree.

(Reply Br. 4). Appellants further contend:

The specifically-recited features of claim 1 cannot be reasonably construed to correspond to merely a *concept* relating to any of the activities discussed above. That is, the recited features performed by a processor require operations, such as identifying a direction of travel, forwarding information to a network device including GPS coordinates and the direction of travel, as well as receiving information from the network device and generating a response requesting reservation of a shower at a first shower facility. A mere *concept* relating to interpersonal and intrapersonal activities, advertising, marketing, and sales activities or behaviors could not result in a shower reservation as required by the detailed operations of claim 1.

(*Id.* at 6).

We disagree with Appellants' characterization of independent claim 1. Although Appellants proffered that the claimed invention is more than a mere concept, the active steps in the computer implemented method merely set forth the following steps: 1) "receive" an input; 2) "generate" a communication; 3) "forward" the communication; 4) "receive" information identifying shower facilities; 5) "output" the travel center information; 6) "generate" a request for a reservation; and 7) "receive" a confirmation code.

We note that the individual steps do not set forth any specific structure, architecture, or specific input/output equipment and merely set

forth the general concepts of a dialogue between a user and a second party to establish a reservation. Consequently, we find the claim merely recites generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry. As a result, the additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself.

Appellants further contend:

The pending claims, such as claim 1, are similarly rooted in computer technology, such as the use of GPS and forwarding and receiving communications/information to/from a network device, to overcome a problem with a driver being able to efficiently reserve a shower, and that takes into consideration the driver's direction of travel and geographical location obtained by a GPS unit.

(Reply Br. 6–7).

We disagree with Appellants' conclusion that the claim is "rooted in computer technology" where the claim limitations only peripherally mention a processor. Moreover, as discussed above, the claims merely use the computer technology to complete the task of organizing human activity; the claims are not "rooted in computer technology in order to overcome a problem specifically arising in the realm of" any of the recited technology, such as GPS equipment or generic computer processors. *See DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1257 (Fed. Cir. 2014); *See also Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 134 S.Ct 2347, 2351 (finding claims were directed to an abstract concept, in part, because the claims do not "purport to improve the functioning of the computer itself or effect an

improvement in any other technology or technical field”). Consequently, we agree with the Examiner that claim 1 is directed to an abstract idea of reserving a shower at a travel center. (Ans. 3).

With respect to step 2B of the *Alice* test, Appellants contend that “the claim elements, taken as a whole, amount to significantly more than an abstract idea.” (Reply Br. 7). Additionally, Appellants contend the claims are more than:

mere instructions to apply an abstract idea or a generic computer structure to perform generic computer functions that are conventional activities known in the pertinent industry. Instead, these features of claim 1 provide a unique and interactive process to allow a user to reserve a shower in an efficient manner. Similar to the findings in *DDR Holdings, LLC v. Hotels.com* (Fed. Cir. 2014) the solution provided by claim 1 “is necessarily rooted in computer technology” in order to overcome a problem specifically arising in the area of making shower reservations remotely by communicating with a network device (see *DDR Holdings*, 13-1505, at 20).

That is, claim 1 recites specific features associated with the user of a GPS unit and forwarding and receiving information to/from a network device to facilitate the reservation process. Such features are clearly not routine or conventional activities known in the industry. As such, these features transform the non-transitory computer-readable medium of claim 1 into a novel and non-obvious computer-readable medium that amounts to significantly more than an abstract idea itself, or an implementation of an abstract idea. Therefore, claim 1 is believed to meet the requirements of 35 U.S.C. § 101 for these additional reasons.

(Reply Br. 8). Again, we disagree with Appellants and find no “unique and interactive process” recited in the language of independent claim 1. The claims merely use the GPS unit in a conventional manner to identify and forward location information, which is simply a part of the abstract concept of making a reservation based on a user’s location.

Appellants generally contend “some limitations when viewed individually may not amount to significantly more than the abstract idea; however, when looking at the additional limitations as an ordered combination, the invention as a whole amounts to significantly more than the abstract idea.” (*Id.* at 9).

We disagree with Appellants and find that Appellants have not identified how the features of claim 1, taken as an ordered combination, amount to significantly more than the abstract idea. Consequently, Appellants’ argument does not show error in the Examiner’s factual findings or legal conclusion of a lack of patent eligible subject matter in independent claim 1.

Appellants present general arguments that limitations in independent claim 1 are similar to Reasons i, v, and vi from the Abstract Idea Workshop II Materials (hereinafter “Workshop II”) issued by the USPTO (Feb. 2016), illustrating the application of the “significantly more inquiry.” (*Id.* at 9–11).

With respect to Reason i, Appellants contend that claim 1 “*improve[s] another technology or technical field*” and “improve[s] the interactions between a customer and a travel center or truck stop to facilitate a reservation for a shower.” (Reply Br. 10). We disagree with Appellants and find that claim 1 does not “improve another *technology or technical field*” (emphasis added). At most, we find independent claim 1 merely tangentially uses well-known computer processor and GPS data with a display with no improvement to any of those well-known devices. Appellants’ own statement contradicts their position, because it states it “improves the interactions between a customer and a” provider of services, which is improving a business interaction, not a technology or technical field.

With respect to Reason v, Appellants contend that a claim may amount to significantly more when one or more elements recited therein “adds a specific limitation other than what is well-understood, routine and conventional in the field.” (*Id.*). Appellants repeat the language of the claim and argue “[w]hile the use of GPS is generally known, claim 1 uses GPS coordinates in addition to a direction of travel to facilitate the identification of one or more travel centers or truck stops. Such features are **not** well understood, routine and conventional in the field.” (*Id.* at 11).

We disagree with Appellants and, as discussed above, the claims merely use the GPS functionality in a conventional manner and integrate that function into the abstract process of making a reservation based on user location and direction of travel. Consequently, Appellants’ argument does not show error in the Examiner’s conclusion of a lack of patent eligible subject matter.

With respect to Reason vi, Appellants contend a claim may amount to significantly more when one or more elements recited “adds unconventional steps that confines the claim to a particular useful application.” (App. Br. 11). We disagree with Appellants’ contention that receiving GPS data from a GPS unit is unconventional. Consequently, Appellants’ argument does not show error in the Examiner’s conclusion of a lack of patent eligible subject matter in representative independent claim 1.

Appellants set forth similar arguments with respect to independent claims 10 and 19, and Appellants do not set forth separate arguments for patentability of dependent claims 2–8, 9, 12–18, 21, 22, and 24–27. (Reply Br. 12–15). We disagree with Appellants’ arguments for the reasons discussed above, and Appellants’ arguments do not show error in the Examiner’s conclusion of a lack of patent eligible subject matter.

Additionally, examining earlier cases can have a role, especially in deciding whether a concept that claims are found to be directed to is an abstract idea. *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an “abstract idea” encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”)

Although we do not consider the specific cases either controlling or germane, that panel’s consideration of evidence in making a determination under the first step of the *Alice* framework has merit. A similar approach was taken in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir. 2016). But these cases do not stand for the proposition that Examiners *must* provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. There is no such requirement. *See, e.g.*, para. IV “July 2015 Update: Subject Matter Eligibility” to 2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a *question of law*. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings” (emphasis added)). Evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. It is not necessary in this case.

We find the Examiner properly and reasonably found that claim 1 is directed to an “abstract idea.” *Cf. Apple*, 842 F.3d at 1240–41 (“An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”) Additionally, as in *Apple*, we find Appellants have not invented a processor, Global Positioning System (GPS) or direction data, and it was known at that time to use those technologies as ways of gathering and entering data into computer.

We should add that Appellants themselves have put forward no rebuttal evidence showing claim 1 is *not* directed to an abstract idea or, if directed to information generation — irrespective of the level of abstraction to which it may be described—it is *not* an abstract idea.

With respect to the second step of the *Alice* framework, none of the individual steps, viewed “both individually and ‘as an ordered combination,’” transform the nature of the claim into patent-eligible subject matter. *See Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297, 1298). The claimed sequence of steps comprises only “conventional steps, specified at a high level of generality,” which is insufficient to supply an “inventive concept.” *Id.* at 2357 (quoting *Mayo*, 132 S. Ct. at 1294, 1297, 1300).

We have considered all the Appellants’ arguments, but find them unpersuasive as to error in the lack of patent eligible subject matter rejection. The rejection is sustained.

35 U.S.C. § 103

With respect to the obviousness rejection, Appellants present arguments to claims in groups. We address the groups as set forth in the Appeal Brief.

With respect to claims 1–3, 7, and 8, Appellants argue the claims together. (App. Br. 10). We select independent claim 1 as the representative claim for the group and address Appellants’ arguments thereto. Appellants generally contend that the Betancourt reference does not disclose or suggest forwarding a communication that includes geographical information, but rather a truck can communicate with a network only when it comes within range of the wireless network. (*Id.* at 11–12).

The Examiner finds that a traveling vehicle has a “route” that necessarily includes a direction of travel, and the Betancourt reference discloses using convenience to the truck’s route as a factor in determining facilities. (Ans. 5; *see also* Betancourt ¶ 43). We agree with the Examiner. The Examiner further finds that the Soroca reference teaches the use of a GPS location and transmission of a direction of travel. (Ans. 5). We agree with the Examiner.

We find the Appellants’ arguments are mainly limited to the discrete embodiment of the Betancourt reference where the communication between the truck and the travel centers begins when the truck enters the specific location at the travel center rather than communications along the route as proffered by the Examiner.

We find Appellants’ argument regarding “[t]he allegation that the signal transmitted by the truck/driver in Betancourt includes geographical information, much less a request for information identifying a shower facility is factually erroneous” unavailing. (Reply Br. 17). We further find

Appellants' arguments regarding solely the Betancourt reference (*Id.* at 16–23) do not consider the totality of the combination as relied upon by the Examiner in the rejection. Consequently, Appellants' arguments do not show error in the Examiner's findings of fact or conclusion of obviousness of independent claim 1.

We further find that the Betancourt reference teaches and suggests providing a current wait time and directions to the service station which would have clearly suggested to one of ordinary skill in the art that location and a direction of travel would be desirable for proper identification of correct directions being sent to the driver. (*See* Betancourt ¶ 35; *see also* Soroca ¶¶ 100, 154, 223, 341, 401, 455, 502, 532, 811, 881, 884, 956, 1426).

Appellants further contend that the Betancourt reference “teaches away from forwarding the direction of travel” because the Betancourt reference specifically discloses sending communications to all stations within a predetermined distance of the trucker's location, which would necessarily include stations located in all directions with respect to the driver's current direction of travel. (*Id.* at 15).

Although Appellants contend the references “teach away” from forwarding a direction of travel (*id.*), our reviewing court guides: “A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *Ricoh Co., Ltd. v. Quanta Computer, Inc.*, 550 F.3d 1325, 1332 (Fed. Cir. 2008). Here, we are unpersuaded that the Betancourt reference teaches away from (discourages) transmission of information identifying direction of travel. We are unconvinced the Betancourt reference actually criticizes, discredits, or otherwise discourages

investigation into the claimed solution. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

Appellants further contend that:

even if Soroca's use of GPS was combined with Betancourt, the combination would not disclose or suggest instructions that cause at least one processor to forward the claimed first communication requesting information identifying at least one shower facility that includes a geographical location and information identifying a direction in which the user is traveling.

(App. Br. 16). We disagree with Appellants' argument and find that the combination of the Betancourt and Soroca references would have taught and suggested the communication of a geographical location and information identifying a direction in which the user is traveling.

We give a disputed claim term its broadest reasonable interpretation, consistent with the Specification. *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). We find no express definition of "information identifying a direction in which the user is traveling" in the Specification, and Appellants point to none. Instead, Appellants continue to repeat the language of the claim and generally contend that the Soroca reference does not forward any communication from mobile communication facility 102 identifying the direction in which the user is traveling, as required by claim 1.

Appellants further contend that the Soroca reference predicts the route or direction of travel based on multiple location recordings. (Reply Br. 20–21). Though understanding the claim language may be aided by explanations contained in the written description, a particular embodiment may not be read into a claim when the claim language is broader than the embodiment. *SuperGuide Corp. v. DirecTV Enters, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

Giving the language of the claim its broadest reasonable interpretation, we agree with the Examiner that both the Betancourt and Soroca references teach and suggest “information identifying direction of travel.” Consequently, Appellants’ argument does not show error in the Examiner’s factual findings or conclusion of obviousness.

With respect to the Appellants’ hindsight and motivation to combine arguments (App. Br. 20–21), the Examiner maintains that both the Betancourt and Soroca references are directed to similar systems for reserving nearby services for mobile users traveling in vehicles, and could have been implemented through routine engineering producing predictable results. (Ans. 6). Appellants present a general argument to the combination and motivation. (Reply Br. 22–23). We disagree with Appellants’ contention and find it unavailing to show error in the Examiner’s findings or conclusion of obviousness based upon the combination of the Betancourt and Soroca references. As a result, we sustain the rejection of representative independent claim 1.

Claims 10, 12, 15, and 16

With respect to claims 10, 12, 15, and 16, Appellants argue the claims together and rely upon the arguments advanced with respect to independent claim 1. (App. Br. 21–22). We select independent claim 10 as the representative claim. Because we found the arguments to be unpersuasive with respect to independent claim 1, we find these same arguments unpersuasive to show error in the Examiner’s obviousness rejection with respect to representative independent claim 10, and we sustain the rejection thereof.

Claim 25

With respect to dependent claim 25, Appellants repeat the language of the claim and rely upon the arguments advanced with respect to claim 1. (*Id.* at 22–23). Because we found the arguments to be unpersuasive with respect to independent claim 1, we find Appellants’ arguments similarly unpersuasive to show error in the Examiner’s obviousness rejection with respect to dependent claim 25, and we sustain the rejection thereof.

Claim 27

With respect to dependent claim 27, the Examiner finds that the claim recites nonfunctional descriptive material which is not entitled to patentable weight. (Ans. 7). Appellants generally contend that the Examiner’s allegation is legally and factually incorrect and the features of the claim should be accorded patentable weight. (App. Br. 23–24; Reply Br. 24).

We disagree with Appellants and find that there is no functional relationship of the claimed information in the computer implemented method of independent claim 10. Consequently, the content of the information does not further distinguish or limit the claimed invention to distinguish over the combination, as the Examiner has identified. Therefore, we find Appellants’ argument does not show error in the Examiner’s findings fact or conclusion of obviousness, and we sustain the rejection thereof.

Claim 4, 6, 17, and 24

Appellants do not set forth separate arguments for patentability of the claims, and Appellants rely upon the arguments advanced with respect to

independent claim 1. (App. Br. 23–24). As a result, we group these claims as falling with representative independent claim 1.

Claims 13 and 14

Appellants do not set forth separate arguments for patentability and argue the claims together. (*Id.* at 25). We select dependent claim 13 as the representative claim for the group and address Appellants’ arguments thereto. Appellants contend that the Yenni reference does not teach or suggest the limitations of dependent claim 13 regarding the calculation of the estimated wait/queue time for a shower. (App. Br. 25–30; Reply Br. 25–27).

The Examiner maintains that the claims do not set forth a specific mathematical formula/algorithm for calculating the wait time and consequently the limitations do not distinguish from the teachings of the Yenni reference. We agree with the Examiner that the language of dependent claim 13 merely sets forth the variables for use in a determination of a shower availability. While we agree with Appellants that the Yenni reference does not specifically address the specific shower parameters recited, we agree with the Examiner that the Yenni reference teaches and fairly suggests the use of similar parameters regarding restroom facilities, which would have fairly suggested to one of ordinary skill in the art the use of the variables as recited in the language of dependent claim 13 in the combination of the Betancourt and Soroca references.

Appellants present arguments to the specific parameters used in the calculation of shower wait time, but Appellants do not address the suggestion in the Yenni reference concerning restroom calculations as it

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would apply to a shower wait time estimate as taught by the combination of the Betancourt and Soroca references. (Reply Br. 25–27).

As a result, we find Appellants’ arguments do not show error in the Examiner’s findings of fact or conclusion of obviousness of dependent claim 13 and dependent claim 14 not argued separately.

Claim 18

Appellants argue that the Spitzer reference does not remedy the deficiencies in the Betancourt and Soroca references as discussed above with respect to claim 10. (App. Br. 30). Because Appellants’ argument did not show error in the rejection of claim 10, Appellants’ arguments similarly do not show error in the Examiner’s findings of fact or conclusion of obviousness of dependent claim 18.

Claims 19, 21, and 22

Appellants argue the claims together. (App. Br. 31–33; Reply Br. 28–29). We select independent claim 19 as the representative claim for the group and will address Appellants’ arguments thereto.

With respect to independent claim 19, Appellants repeat the language of the claim and rely upon the arguments advanced with respect to dependent claim 13. Appellants further contend that “Yenni clearly does not disclose or suggest estimating a wait time based on an average shower time and an average time for cleaning a shower, as required by claim 19.” (App. Br. 32). Appellants further contend that the Ferrara reference does not remedy the deficiency. Appellants also argue that the Examiner has “not provide[d] the requisite motivation for combining Ferrara with the combination of Betancourt and Yenni.” (Reply Br. 29).

The Examiner maintains that Appellants argue the references individually. (Ans. 8). Additionally, the Examiner has set forth a discussion in the Final Office Action of each of the prior art references and how the teachings would have been combined. The Examiner explained:

Although Yenni does not explicitly teach the queue is electronic; this is taught by Ferrara (¶¶ 0012, 19). It would have been prima facie obvious to one having ordinary skill in the art to incorporate this feature for the same reason it is useful in Ferrara—namely, to avoid a physical queue and provide updates. Moreover, this is merely a substitution of the queue in Ferrara for the queue in Yenni. Both are disclosed in the art of providing services to customer as ways to determine order of service. Based on the level of skill displayed in the references, this substitution could have been implemented through routine engineering producing predictable results.

(Final Act. 13–14). We agree with the Examiner’s findings and conclusion and find Appellants’ argument does not show error in the rejection of representative claim 19 as set forth by the Examiner.

Claim 26

Appellants rely upon the arguments advanced with respect to dependent claim 13. (App. Br. 33–34). Because we found Appellants’ arguments to be unpersuasive with respect to claim 13, we similarly find them unpersuasive with respect to claim 26.

CONCLUSIONS

The Examiner did not err in rejecting the claims 1–4, 6–8, 10, 12–19, 21, 22, and 24–27 under 35 U.S.C. §§ 101 and 103.

DECISION

For the above reasons, we sustain the Examiner's rejection of claims 1–4, 6–8, 10, 12–19, 21, 22, and 24–27 based upon a lack of patent eligible subject matter under 35 U.S.C. § 101, and we sustain the Examiner's rejections of claims 1–4, 6–8, 10, 12–19, 21, 22, and 24–27 based upon obviousness under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED